

1 ROWLAND MARCUS ANDRADE  
2 9414 Plaza Point Drive  
3 Missouri City, Texas 77459 USA  
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5 In Pro Se  
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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION  
10

11 UNITED STATES OF AMERICA,  
12 Plaintiff,

13 v.

14 ONE PARCEL OF REAL PROPERTY  
LOCATED AT 9414 PLAZA POINT DRIVE,  
15 MISSOURI CITY, TEXAS 77459,

16 Defendant.

17 ROWLAND MARCUS ANDRADE,  
18 Claimant.

19 SOLMAZ ANDRADE,  
20 Claimant.

21 WILMINGTON SAVINGS FUND SOCIETY,  
22 FSB as trustee for IRP FUND II TRUST 2A,  
23 Claimant.

Case No. 3:20-cv-2013-VC

**NOTICE OF MOTION AND MOTION OF  
ROWLAND MARCUS ANDRADE FOR A  
PROTECTIVE ORDER TO PRESERVE  
EVIDENCE; MEMORANDUM OF  
POINTS AND AUTHORITIES**

*Filed concurrently with Declaration of  
Rowland Marcus Andrade; [Proposed] Order*

Judge: Hon. Vince Chhabria

Trial Date: None Set

Hearing Date: July 16, 2020, 10:00 a.m.

26 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**  
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Case No. 3:20-cv-2013-VC

NOTICE OF MOTION AND MOTION OF ROWLAND MARCUS ANDRADE FOR AN ENTRY OF AN ORDER  
TO PRESERVE EVIDENCE; MEMORANDUM OF POINTS AND AUTHORITIES

1           **PLEASE TAKE NOTICE THAT** on July 16, 2020, at 10:00 a.m., or as soon thereafter  
 2 as counsel may be heard, in the courtroom of the Honorable Vince Chhabria, located in the United  
 3 States Courthouse, Northern District of California, San Francisco, Rowland Marcus Andrade  
 4 (“Claimant”) will and hereby does move this Court for an order requiring the Plaintiff United  
 5 States to preserve and produce all evidence of any kind obtained through the governments’  
 6 investigation(s) into Claimant, Jack Abramoff, Japheth Dillman, IRS Agent Bryan Wong, FBI  
 7 Agent Ethan Quinn, FBI Agent Rohan Wynar, and related parties, including but not limited to any  
 8 search or seizure of Claimant Andrade’s businesses, computers, home, or other property or that of  
 9 Jack Abramoff, and/or Japheth Dillman and any alleged associates of Andrade or Abramoff as it  
 10 relates to the Complaint and to all of the criminal offenses allegedly committed by Andrade and  
 11 his associates.

12           This Motion is made upon the following grounds:

13           1.       The All Writs Act, 28 U.S.C. § 1651, allows “all courts established by Act of  
 14 Congress [to] issue all writs necessary or appropriate in aid of their respective jurisdictions and  
 15 agreeable to the usages and principles of law.” This Court and other courts within the Ninth  
 16 Circuit have held that the All Writs Act allows the Court to enter an order for the preservation of  
 17 evidence upon request by a party. *Stanley v. Ayers*, No. 07-cv-4727-EMC, 2018 WL 4488298, at  
 18 \*2 (N.D. Cal. Sept. 17, 2018).

19           2.       As set forth in the Declaration of Rowland Marcus Andrade filed herewith, the  
 20 United States pursuant to a search and seizure warrant in 2018 seized a computer from Andrade’s  
 21 business containing audio recordings of call logs related to Andrade’s business dealings at issue in  
 22 this civil forfeiture case. The government returned that computer in May 2020 with significant  
 23 external damage.

24           3.       As set forth in the attached Affidavit of Terry Landry, a computer forensics expert  
 25 hired to examine the computer Andrade returned by the government, there were no audio files on  
 26 the computer, indicating that the government removed all of Andrade’s audio files from the  
 27 computer before returning it. This is astounding because the government when seizing computers  
 28 is obligated to copy the contents and return the computer to its owner in the state it was originally

1 found without deleting files. Indeed, Federal agents told Claimant's contractors working in his  
2 office not tell Claimant about the raid or that they were there.

3       4. The audio files on the computer contained significant material exculpatory  
4 evidence, as they included recordings of calls with purchasers of AML Bitcoins demonstrating the  
5 legitimate and non-fraudulent nature of Andrade's cryptocurrency business.

6       5. The evidence in the governments possession included exculpatory recordings of  
7 calls between Andrade on the one hand and convicted felon Jack Abramoff or his associates on the  
8 other. These calls would support other written evidence showing that Abramoff attempted to  
9 extort Andrade into selling his technology and intellectual property to Abramoff by threatening to  
10 cause his associates to file lawsuits and bring baseless criminal and civil charges against Andrade,  
11 including the present case.

12       6. Because the government has already shown a disregard for Andrade's due process  
13 and property rights throughout this civil forfeiture lawsuit, and the government has demonstrably  
14 removed exculpatory evidence from Andrade's possession through search and seizure warrants, an  
15 order requiring the government to preserve and produce all evidence in its possession is necessary  
16 to preserve the integrity of the evidence in question and to prevent irreparable harm to Andrade.

17       This Motion is based on this Notice of Motion, the attached Memorandum of Points and  
18 Authorities, the Declarations of Rowland Marcus Andrade and Terry Landry filed concurrently  
19 herewith, all of the pleadings, files, and records in this proceeding, all other matters of which the  
20 Court may take judicial notice, and any argument or evidence that may be presented to or  
21 considered by the Court prior to its ruling.

22 Dated: June 10, 2020

Respectfully submitted,

23  
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25 By:

Rowland Marcus Andrade  
In Pro Se and Claimant

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

## **INTRODUCTION**

On September 13, 2018, the government seized a computer and other electronics from my business located in Las Vegas, Nevada, the NAC Foundation, LLC (“NAC”), containing audio recordings of all calls made to or from NAC’s offices. Those audio recordings included calls with customers demonstrating that myself and my third-party contracted staff made every effort to ensure customers knew exactly what they were purchasing when they purchased NAC’s then-available cryptocurrency, AML Bitcoin Tokens. Those audio recordings in the governments possession also included calls with convicted felon Jack Abramoff, who attempted to extort me into selling my technology and intellectual property to him by threatening to have his associates and cronies in government bring expensive, embarrassing, and frivolous civil and criminal prosecutions against me—including this case, a frivolous claim for wire fraud created by Abramoff’s associate Japheth Dillman, referred to in the Complaint as “JD.”

When the government returned my computer in May 2020, the computer was smashed and there were no audio files on it. I have no idea whether the government has a copy of those audio files, or simply destroyed them. In either case, as the government has already demonstrated a willingness to tamper with or destroy exculpatory evidence, the Court should enter an order requiring the government to preserve all evidence related to any civil or criminal investigation of me in its possession and produce it to the Court for safekeeping.

## **STATEMENT OF ISSUES**

22 Whether the Court, in view of the government's already demonstrated failure to preserve  
23 material exculpatory evidence, should enter an order requiring the government to preserve all  
24 evidence related to any investigation of me and to produce that evidence to the Court for  
25 safekeeping in advance of discovery.

## **STATEMENT OF FACTS**

## **27 | A. The Government's Destruction of Electronic Evidence**

1 On May 7, I received a shipment from the government containing a computer that had  
 2 been seized from NAC's offices located in Las Vegas, Nevada by the U.S. Department of Justice  
 3 on September 13, 2018 (the "Computer"). Declaration of Rowland Marcus Andrade in Support of  
 4 His Motion to Preserve Evidence ("Andrade Decl") at ¶ 2. When I opened the shipping package, it  
 5 was evident that the Computer had been severely damaged. Andrade Decl., Ex. A. Upon  
 6 examination of the shipping container, there was no broken glass or fragments of the Computer  
 7 which suggests the Computer was damaged prior to shipment by the government. Andrade Decl.  
 8 at ¶ 3. On the same day of receipt, I filed a police report for Investigative Mischief with the  
 9 Houston Police Department pursuant to Case No. 0602316-20. Andrade Decl., Ex. B.

10 Before the government seized the Computer, it contained evidence material to the present  
 11 case. For compliance reasons, all the incoming and outgoing calls made to my office from various  
 12 individuals prior to the seizure in 2018, including those who would be material fact witnesses in  
 13 this case, were recorded and those recordings were stored on the Computer, according to  
 14 statements made by Claimant's contractors working in the office. Andrade Decl. at ¶ 5. These call  
 15 records are vital in they prove false many of the Plaintiff's allegations in the Complaint. The  
 16 recordings are exculpatory evidence including calls with various purchases of Claimant's digital  
 17 currency, consultant calls, calls with Jack Abramoff, and politicians involved with the AML  
 18 Bitcoin project. Andrade Decl. at ¶ 5.

19 Before the government seized the Computer in 2018, I hired a 3rd party service provider in  
 20 Las Vegas, Nevada, The Office Squad ("Office Squad"), to process the audio recordings from the  
 21 telephone system to the Computer. Andrade Decl. at ¶ 6. Representatives from the Office Squad  
 22 told me they completed the audio recordings and they stored them on the Computer. One of Office  
 23 Squad's former employees stands by this. Andrade Decl. at ¶ 6. The Computer was the only  
 24 computer I owned or operated in NAC's Las Vegas office in 2018. Andrade Decl. at ¶ 6. From  
 25 2018 to present, FBI agents have been in contact with representatives from the Office Squad.  
 26 Andrade Decl. at ¶ 7. According to representatives from the Office Squad, FBI agents informed  
 27 them not to communicate with me or inform me of their involvement. Andrade Decl. at ¶ 7. As a  
 28 result of the FBI's scare tactics, I have been unsuccessful in obtaining a written statement or the

1 return of any e-mail communications at all from the Office Squad pertaining to the recordings.

2 Andrade Decl. at ¶ 7.

3       Upon receiving the damaged Computer, I immediately sent it to Pathway Forensics  
 4 (“Pathway”), a digital forensics company owned by a retired FBI agent, for inspection. Andrade  
 5 Decl. at ¶ 8. As set forth in the attached Affidavit of Terry Landry (“Landry Affidavit”), none of  
 6 the recordings of any of the office’s incoming and outgoing calls are on the Computer. Andrade  
 7 Decl., Ex. C at ¶¶ 8-9. Presumably, the government remains in possession of copies of these audio  
 8 recordings. The government and the FBI have also conspired to keep this evidence from Claimant  
 9 through its communications to representatives of the Office Squad. Andrade Decl. at ¶ 7.

10      In addition to the destruction of exculpatory evidence on my computer, the government has  
 11 mishandled other evidence as well. In the Complaint, the government alleged that my Wells Fargo  
 12 account ending in (9668) was used to conceal money. Dkt. No. 1 at ¶ 13. However, in their seizure  
 13 of documents from my office in March 12, 2020, the FBI left many financials, copies of issued  
 14 checks, payments to all the service providers and other AML Bitcoin related expenses from the  
 15 same bank account. Andrade Decl. at ¶ 11. For example, the government left behind pay stubs and  
 16 expense receipts for my business, copies of which are attached to my supporting declaration as  
 17 Exhibit D. Additionally, the government omits from its Complaint the fact that I used the account  
 18 in question to make numerous business expenditures, including paying payroll, server costs, rent,  
 19 etc. Andrade Decl. at ¶ 11. These documents, which consist of exculpatory evidence, were not  
 20 taken and left behind and not mentioned by Plaintiff in the Complaint because they demonstrate  
 21 that I have a legitimate business with legitimate expenditures, and so did not defraud “VICTIM  
 22 ONE” or any other customer.

23 **B. The Connection Between Jack Abramoff’s Extortion Attempt and the Present Case**

24      The evidence absent from the Computer includes audio recordings showing that the  
 25 present case is part of an extortion scheme by convicted felon Jack Abramoff against me—and  
 26 that extortion scheme itself demonstrates that the allegations of the Complaint are false.

27      Far from being the scam the government alleges in the Complaint (*see* Dkt. No. 1 at ¶ 16),  
 28 my technology underlying AML Bitcoin was valued at over \$100 million. In 2017, famous

1 convicted felon and lobbyist Jack Abramoff and several of his associates, including J.D. came to  
 2 me offering their help to develop AML Bitcoin partnerships with government officials. Andrade  
 3 Decl. at ¶ 13. I hired several of his associates including Japheth Dillman, whom I hired as a “Chief  
 4 Strategy Officer” to assist in developing those business relationships. Andrade Decl. at ¶ 13. But  
 5 later, Jack Abramoff attempted to extort me to sell my business interests and intellectual property  
 6 for \$100 million, and as part of that sale to pay Abramoff himself a \$40 million finder’s fee.  
 7 Andrade Decl. at ¶ 14.

8 On August 20, 2019, Jack Abramoff’s associate David Cohen sent me a long email urging  
 9 me to accept Abramoff’s buyout deal. Andrade Decl., Ex. E. The letter stated: “If you let this life  
 10 preserver float away, for whatever reason, you can imagine on your own the possible bad  
 11 outcomes several of which I have listed at the bottom of this email in blue. I am in no way  
 12 threatening you; I am trying to present you with possible outcomes so you can make a rational and  
 13 unemotional decision.” *Id.* at 2. The bad outcomes listed in the email include the federal  
 14 government seizing my patents, other companies, and assets under asset forfeiture laws—exactly  
 15 what the government is attempting to do in this case. *Id.* at 3.

16 On August 28, 2019, Cohen sent another long email, with the subject line “Jack is on a  
 17 plane but I wanted to send you this,” attempting to increase the pressure of their extortionate  
 18 threats. Andrade Decl., Ex. F. In that email, Cohen wrote: “And what happens if the IRS or the  
 19 DoJ decide to pursue asset forfeiture even before you are convicted of or plead to anything  
 20 (without the money required to mount a defense against the federal government)? They do that all  
 21 the time, as you might know. If they do so here, the project is dead. No one will get anywhere near  
 22 this project.” *Id.* I do not believe it is a coincidence that the government subsequently filed a  
 23 complaint for civil forfeiture here without bringing any criminal charges.

24 Abramoff is also intimately connected to the other individuals identified in the  
 25 government’s complaint: “JD,” an individual named Japheth Dillman, and “VICTIM ONE,” an  
 26 individual named Benjamin Boyer. The purchases of AML Bitcoin Tokens that the government  
 27 erroneously calls “investments” in the Complaint (Dkt. No. 1 at ¶ 10) were made by a company  
 28 named Block Bits Capital, LLC (“Block Bits”), apparently using Boyer’s money. Andrade Decl. at

¶ 19. In September 2017 and again in April of 2018, J.D. attempted to get me to join Block Bits, and shared with me a list of the owners. Andrade Decl., Ex. G. Included in that list of owners is Landfair Capital Consulting, Inc. (“Landfair”), a company founded by Abramoff’s relatives that has been used as a shell to hide Abramoff’s business interests. *See* Dkt. No. 18 at 35 (Ex. C). This is the same pattern of behavior Abramoff pled guilty to in 2006: obtain a client for his lobbying activities, direct the client to hire his cronies, and then get kickbacks from those cronies behind the scenes. Department of Justice Press Release, *Former Lobbyist Jack Abramoff Pleads Guilty to Charges Involving Corruption, Fraud Conspiracy, and Tax Evasion* (Jan. 3, 2006), [https://www.justice.gov/archive/opa/pr/2006/January/06\\_crm\\_002.html](https://www.justice.gov/archive/opa/pr/2006/January/06_crm_002.html).

Abramoff’s reach appears to also extend to the IRS Agent who verified the Complaint for the government, Bryan Wong. Jack Abramoff introduced a potential customer to me by the name of “Bryant Lee,” who asked several unusual questions about the nature of AML Bitcoin. Andrade Decl. at ¶ 22. On information and belief, I later learned that “Bryant Lee” was an alias used by Wong to investigate my business. Andrade Decl. at ¶ 22. Because Abramoff is well known to have connections throughout the federal government, Abramoff introduced “Lee” to me. There is a high probability that Bryant Lee is agent Bryan Wong. This is further reason to believe that this civil forfeiture action is not a bona fide criminal investigation, but the carrying out of Abramoff’s extortionate threats.

**C. The Plaintiff’s Refusal to Confirm Preservation of Evidence Prior to My Filing This Motion.**

On May 18, 2020, having discovered the government’s destruction of electronic evidence on my computer, I sent a letter to the government’s counsel, AUSA Chris Kaltsas, requesting that the government preserve evidence. See Dkt. No. 22 at ¶ 6, Ex. A. On May 20, 2020 Kaltsas responded to my letter, stating that he did not have access to the evidence that supports the complaint because it was at his office and he was still working from home because of the Covid-19 pandemic. See Dkt. No. 22 at ¶ 7, Ex. B. He also stated that the government refused to advance the discovery schedule or to produce any evidence supporting the government’s complaint outside of discovery. *Id.*

1       Because the government refused to produce evidence supporting the Complaint, I filed a  
 2 motion to shorten time and proceed with discovery on May 26, 2020. Dkt. No. 22. The  
 3 government filed its opposition to that motion on May 27, 2020. Dkt. No. 24. In that opposition,  
 4 Kaltsas took a different position than his earlier letter claiming that the evidence was at the U.S.  
 5 Attorney's office. Instead, Kaltsas stated that the government needs to obtain the evidence from  
 6 the IRS and FBI, suggesting that the U.S. Attorney's office never even had the evidence in their  
 7 possession in the first place, prior to filing the Complaint. See Dkt. No. 24 at 2.

8       In response to the government's already demonstrated destruction of evidence and AUSA  
 9 Kaltsas's inconsistent representations regarding the location of evidence relevant to this case, I  
 10 proceeded to file the present motion.

### **ARGUMENT**

12       The Court should enter an order requiring the United States to preserve evidence related to  
 13 its criminal and civil investigation of me and my business because there is a significant danger,  
 14 already demonstrated, that the government will destroy or conceal exculpatory evidence and cause  
 15 irreparable harm to my ability to defend myself from this and other charges.

16       The All Writs Act, 28 U.S.C. § 1651, allows the Court to enter all writs appropriate in aid  
 17 of their respective jurisdictions, including orders to preserve evidence. *Stanley*, 2008 WL  
 18 4488298, at \*1. This Court and others in the Ninth Circuit have adopted a balancing test to  
 19 determine whether a request for an order to preserve evidence should be granted, applying the  
 20 following three factors:

21       1) the level of concern the court has for the continuing existence and maintenance  
 22 of the integrity of the evidence in question in the absence of an order directing  
 23 preservation of the evidence; 2) any irreparable harm likely to result to the party  
 24 seeking the preservation of the evidence absent an order directing preservation; and  
 25 3) the capability of an individual, entity, or party to maintain the evidence sought to  
 26 be preserved.

27       *Stanley*, 2018 WL 4488298, at \*2 (quoting *Echostar Satellite LLC v. Freetech, Inc.*, No. C 07-  
 28 06124 JW, 2009 WL 8399038, at \*2 (N.D. Cal. Jan. 22, 2009)). Preservation orders may be  
 imposed on government entities including prosecutors and the federal government. In *Stanley*, this  
 Court entered an order requiring the Alameda County District Attorney's Office to preserve

1 evidence reflecting the prosecutor's reasons for striking jurors in the plaintiff's criminal case. 2018  
 2 WL 4488298, at \*2. This Court has also entered orders requiring the United States to preserve  
 3 evidence relating to recording of telecommunications by the National Security Agency. *In re*  
 4 *National Security Agency Telecommunications Records Litig.*, MDL No. 06-1791-VRW, 2007  
 5 WL 3306579 (N.D. Cal. Nov. 6, 2007).

6 As explained in the Statement of Facts above, all three factors weigh heavily in favor of an  
 7 order preserving evidence here. The already demonstrated tampering with the Computer, together  
 8 with the connections in evidence between Abramoff's extortionate threats to cause civil forfeiture  
 9 proceedings against me if I did not sell my business and between Abramoff and IRS Agent Bryan  
 10 Wong, show that the Court should have a grave concern for the continuing existence and  
 11 maintenance of the integrity of evidence in the government's possession. The government's  
 12 inconsistent statements regarding the location of evidence should cause concern about the integrity  
 13 of the government's current evidence preservation. Compare Dkt. No. 22, Ex. B ("I am currently  
 14 not working in my office, where the discovery materials you seek lie") to Dkt. No. 24 ("The  
 15 Government attorney assigned to this matter cannot easily access all discovery relevant to this  
 16 matter until the United States Attorney's Office, the local office of the Federal Bureau of  
 17 Investigation, and the local office of the Internal Revenue Service – Criminal Investigation  
 18 Division open."). If the United States Attorney's Office did not have copies of the evidence to  
 19 support the Complaint, who really filed the Complaint? The government's *ex parte* submission of  
 20 evidence under seal, about which the Court has already demonstrated skepticism (Dkt. No. 30),  
 21 further demonstrates the government's lack of regard for my due process rights and a need for the  
 22 Court to take charge of evidence preservation.

23 The destruction of evidence in question—the audio recordings stored on the Computer at a  
 24 minimum—would cause me irreparable harm. Because the government deleted the audio  
 25 recordings from the Computer, the only copies of those recordings are in the government's  
 26 possession. Those recordings demonstrate both that I took great care to ensure compliance with  
 27 the law in all my business dealings, and that Abramoff and his associates took part in a scheme to  
 28 extort me into selling my business under threat of frivolous civil and criminal litigation, including

1 civil forfeiture actions. Andrade Decl. at ¶¶ 5, 12-22. And the United States plainly has the  
2 capability to preserve evidence, though in view of the probability that Abramoff's extortion  
3 scheme reaches into the government agencies at issue, additional action by the Court may be  
4 required to ensure the integrity of the evidence in question. That is why I am requesting that the  
5 Court not merely enter an order to preserve evidence, but that the Court order the government to  
6 produce all evidence relating to the allegations at issue in this case to the Court for safekeeping.

## **CONCLUSION**

8 The government has already destroyed or withheld exculpatory evidence from me. As  
9 improbable as it may seem, the evidence attached to this motion indicates that this civil forfeiture  
10 action is part of an extortion scheme by famous convicted felon and lobbyist Jack Abramoff to  
11 force me to sell my business under threat of criminal action, and that Abramoff has connections in  
12 the IRS and FBI that put exculpatory evidence in danger of destruction.

13 I therefore respectfully request that this Court enter an order directing the United States,  
14 and specifically the U.S. Department of Justice, the FBI, the SEC, the U.S. Treasury, and their  
15 employees and agents to preserve all physical, documentary, or other evidence in their possession,  
16 custody, or control relating to the allegations at issue in this case, including all email  
17 communications sent or received by the Plaintiff and/or any U.S. government agency and their  
18 associates whether those communications are stored in government email accounts, in personal  
19 email accounts, or in some other location; and for the United States to produce all such evidence in  
20 its possession to the Court for safekeeping in advance of formal discovery.

23 | Dated: June 10, 2020

Respectfully submitted,

By:

Rowland Marcus Andrade  
In Pro Se and Claimant